

Proposed Text of Rule

TITLE 7 NYCRR

Chapter I, Part I, Section 1.5

Subdivision (f) is amended as follows:

(f) Correctional facility means any place operated by the department and designated by the commissioner as a place for the confinement of persons under sentence of imprisonment[or persons committed for failure to pay a fine].

Subdivision (u) is amended as follows:

(u) *Special populations* means any person: (1) who is pregnant, or in the first eight weeks of post-partum recovery period regardless of how the pregnancy ended, or caring for a child in a correctional institution pursuant to subdivision two or three of section six hundred eleven of the Correction Law;[or] (2) who suffers from a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the Executive Law and said disability impairs the individual's ability to provide self-care within the environment of a correctional facility; (3) twenty-one years of age or younger; or (4) fifty-five years of age or older.

Subdivision (v) is amended as follows:

(v) Segregated confinement means [the disciplinary confinement of an incarcerated individual in a special housing unit or in a separate keeplock unit. Special housing units and separate keeplock units are housing units that consist of cells grouped so as to provide separation from the general population and may be used to house incarcerated individuals confined pursuant to the disciplinary procedures described in this Title]the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day other than a facility wide emergency or for the purpose of providing medical or mental health treatment.

Subdivision (w) is amended as follows:

(w) Administrative segregation means the involuntary removal of an incarcerated individual from general confinement [and placement in a special housing unit or residential rehabilitation unit] based upon a determination that the individual's continued presence in general population would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape. While in such status, an incarcerated individual will not be cell confined for more than seventeen hours a day other than a facility wide emergency or the purpose of providing medical or mental health treatment.

Subdivision (x) is repealed.

Chapter V

Chapter V title, amend as follows:

Chapter V Procedures for Implementing the Standards of [Inmate]Incarcerated Individual Behavior and for Granting Good Behavior Time Allowances

Subchapter A, Part 250

Section 250.2 is repealed.

Section 251-1.5 is repealed.

Section 251-1.6 is amended as follows:

(a) [Where an officer has reasonable grounds to believe that an inmate should be confined to his cell or room or housing area because he represents an immediate threat to the safety, security or order of the facility or in immediate danger to other persons or to property, such officer shall take reasonable and appropriate steps to so confine the inmate.]Incarcerated individuals in special populations as defined in 7 NYCRR § 1.5 shall not be placed in segregated confinement for any length of time.

(b) An [inmate also]incarcerated individual may be confined to [his]a cell or room where such action appears reasonably necessary for protection of the [inmate]incarcerated individual. In any such case, however, the [inmate]incarcerated individual shall not be so confined for more than [72]17 hours, unless approval for an extension of this time has been granted by the facility superintendent and deputy commissioner for correctional facilities. In which case this period may be extended up to 48 hours. [and within such time period the inmate shall either be:

- (1) transferred to another housing unit;
- (2) scheduled for transfer to another facility;
- (3) released from such confinement; or
- (4) placed in protective custody.]

Subdivisions (c), (d), and (e) are repealed.

Subdivision (f) is renumbered subdivision (c), and newly renumbered Subdivision (c) is amended as follows:

([f]c) The provisions of this section shall not be construed so as to prohibit emergency action by the superintendent of the facility and, if necessary for the safety or security of the facility,

all [inmate]incarcerated individuals or any segment of the [inmate]incarcerated individuals in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or security of the facility is in jeopardy. In any such case the superintendent shall immediately notify the commissioner.

Section 251-1.7 is amended as follows:

Section 251-1.7. Admission to special housing units

Admission of an [inmate]incarcerated individual to a special housing unit shall be in accord with Part 301 of this Title.

Section 251-2.1 is repealed.

Section 251-2.2 is amended as follows:

Section 251-2.2. [Function of the review officer]Misbehavior report review

[(a) The]A review officer shall [receive at least once daily,] review all misbehavior reports, [issued at the facility]which have not yet been reviewed, at least once on each shift. The review officer shall also review the status of each incarcerated individual confined pursuant to a misbehavior report under review within 17 hours of such confinement and may order release from confinement where the act of misbehavior is ineligible for segregated confinement.

Subdivisions (b), (c), (d), (e), and (f) are repealed

Section 251-4.1 is amended as follows:

Section 251-4.1. [Inmate assistant]Employee Assistance.

(a) An [inmate]incarcerated individual shall have the opportunity to[pick an employee from an established list of persons] request assistance from an employee, to be designated by the facility, who shall assist the [inmate]incarcerated individual when a misbehavior report has been issued against the [inmate]incarcerated individual if:

- (1) the [inmate]incarcerated individual is either illiterate or non-English speaking; or
- (2) the [inmate]incarcerated individual is sensorially disabled (in which case the [inmate]incarcerated individual will be provided reasonable accommodations including, but not limited to, the provision of a qualified sign language interpreter for a deaf and hard of hearing [inmate]incarcerated individual who uses sign language to communicate); or
- [(3) the inmate is charged with drug use as a result of a urinalysis test; or]

[(4)3] the [inmate]incarcerated individual is [confined]placed in segregated confinement pending a superintendent's hearing to be conducted pursuant to Part 254 of this Title.

(b) In other cases where a misbehavior report has been issued, the review officer or hearing officer, in his absolute discretion, may offer an [inmate]incarcerated individual the opportunity to [pick an inmate assistant]seek employee assistance where such assistance would enable the [inmate]incarcerated individual to adequately comprehend the case in order to respond to the charges.

Section 251-4.2 is repealed.

Section 251-5.1 is amended as follows:

(a) Where an [inmate]incarcerated individual is subject to a [confined pending a disciplinary hearing or]superintendent's hearing, the hearing must be completed [as soon as is reasonably practicable following the inmate's initial]within five days of such placement in segregated confinement, [pending said disciplinary hearing or superintendent's hearing, but, in no event may it be commenced beyond seven days of said confinement without authorization of the commissioner or his designee]unless the subject incarcerated individual requests a postponement for the purposes of seeking employee assistance and/or representation.

(b) [The disciplinary hearing or superintendent's hearing must be completed within 14 days following the writing of the misbehavior report unless otherwise authorized by the commissioner or his designee. Where a delay is authorized, the record of the hearing should reflect the reasons for any delay or adjournment, and an inmate should ordinarily be made aware of these reasons unless to do so would jeopardize institutional safety or correctional goals]Requests to postpone the hearing must be submitted by the charged individual to the hearing officer, in person, at the individual's first appearance before the hearing officer. Failure to appear will result in the waiver of any postponement request and the hearing will be held in the charged individual's absence. Postponement requests will not be accepted by escorting officers or other departmental staff.

Subdivision (c) is repealed.

New Section 251-5.2 is added as follows:

Section 251-5.2. Representation

(a) Where an incarcerated individual is placed in segregated confinement pending a disciplinary hearing or superintendent's hearing, such incarcerated individual shall be permitted to be represented by:

(1) an attorney, having good standing, admitted to practice in any state;

(2) a law student, provided that an attorney member of the law school's faculty certifies to the Department, in writing, that the faculty member has direct supervisory authority over the student, shall make reasonable efforts to ensure that the student's conduct is

compatible with the professional obligations of a lawyer, and provide the faculty member's contact information through the school's publicly listed business phone number and school issued email address;

(3) a paralegal, provided that an attorney, having good standing, admitted to practice in any state certifies to the Department, in writing, that shall make reasonable efforts to ensure that the paralegal's conduct is compatible with the professional obligations of the lawyer and the paralegal has met one or more of the following requirements:

(i) Successful completion of the Certified Paralegal (CP) certifying examination of NALA;

(ii) Graduation from an ABA approved program of study for paralegals;

(iii) Graduation from a course of study for paralegals which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of 60 semester hours of class-room study;

(iv) Graduation from a course of study for paralegals, other than those set forth above, plus not less than six months of in-house training as a paralegal;

(v) A baccalaureate degree in any field, plus not less than six months in-house training as a paralegal;

(vi) A minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a paralegal; or

(vii) Two years of in-house training as a paralegal.

(4) another incarcerated individual, provided that the proposed representative is willing to serve as such representative and meets the following objective criteria:

(i) is located at the same facility where the charged individual is located. If a charged individual with an approved incarcerated representative is transferred prior to any pre-hearing contact with their representative, the charged individual may request a postponement for representation by a different incarcerated individual, subject to all Departmental criteria for such representation;

(ii) is medically able to participate in the hearing and has a Beta IQ score above 70;

(iii) has not been found guilty of any Tier III offense within the last year;

(iv) has received a high school or equivalency diploma or is currently enrolled in a high school equivalency program; and

(v) is pursuing their most recently assigned earned eligibility or program plan with no current program refusals.

New Section 251-5.3 is added as follows:

Section 251-5.3. Notice of outside representation

(a) At least two business days before the scheduled hearing, the attorney, law student, or paralegal must contact the facility by email, providing notice of representation, written certification such representative meets all departmental requirements for such representation, and a publicly listed business phone number where they can be reached by the hearing officer at scheduled date and time of the hearing.

New Section 251-5.4 is added as follows:

Section 251-5.4. Outside representative requests

(a) Outside representatives may make one written request for postponement for rescheduling or additional employee assistance requests, provided that such request is submitted by email with the notice of outside representation and reasonably describe the assistance sought.

(b) Reasonable postponement requests may be granted dependent upon the scheduling needs of the facility; however, such postponements may not exceed 14 calendar days from the charged initial placement in segregated confinement.

Section 253.7 is amended as follows:

Section 253.7. Dispositions and mandatory surcharge

(a) Dispositions.

(1) Upon affirming a charge, the hearing officer may impose one or more of the following penalties:

(i) counsel and/or reprimand; and

(ii) [loss of one or more specified privileges for a period of up to 30 days, however, correspondence and visiting privileges may not be withheld;] any non-confinement sanction in accordance with departmental directive 4932.

(a) A loss of visiting privileges may be imposed under this subparagraph for any confirmed charge;

A loss of visiting privileges with a specified visitor or visitors may be imposed where the misconduct involved only the incarcerated individual and the specified visitor or visitors. Where the misconduct was not limited to the specified visitor or visitors a loss of visiting privileges with all visitors may be imposed. Misconduct involving Unacceptable Physical Conduct during which

other visitors were subjected to exposure is misconduct which is not limited to only the inmate and the specified visitor or visitors. Misconduct involving an attempt to introduce money, alcohol, marijuana, narcotic and other dangerous drugs, any item which is readily capable of being used to cause death or serious injury, or any item which may be used to aid in escape is misconduct which is not limited to only the incarcerated individual and the specified visitor or visitors;

A loss of visiting privileges may be imposed under subparagraph (ii) only for the length of time stated in departmental directive 4932 and

The hearing officer may, within his or her discretion, limit an incarcerated individual to noncontact visiting in lieu of suspending all visiting privileges;

(b) Restitution may be imposed for loss or intentional damage to property up to be made from an incarcerated individual's existing and future funds;

(c) The imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the incarcerated individual's housing unit or other designated area. Incarcerated individuals given such disposition who are participating in a regular work assignment shall not be required to work more than 8 hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming; and

(d) Forfeiture of money confiscated as contraband.

[(iii) confinement to a cell or room continuously or to a special housing unit under keeplock admission or on certain days during certain hours for a period of up to 30 days (see Chapter VI, Part 301, section 301.6);

(iv) restitution for loss or intentional damage to property up to \$100; or

(v) the imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than eight hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming.

(2) any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed unless the hearing officer advised the inmate that the penalty shall run concurrently.

(3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be

served after completion of the more restrictive penalty period.

(4) The disciplinary hearing officer may suspend imposition of any penalty for a period of up to 90 days. Any such suspended penalty may be imposed by a subsequent disciplinary hearing or superintendent's hearing officer upon substantiating a charge of misbehavior in a subsequent hearing within the specified period.

(5)](2) As soon as possible, but not later than 24 hours after the conclusion of the hearing, the [inmate]incarcerated individual shall be given a written statement of the disposition of the hearing. This statement shall set forth the evidence relied upon by the hearing officer in reaching his decision and also set forth the reasons for any penalties imposed.

(b) *Mandatory disciplinary surcharge.* Upon the conclusion of a disciplinary hearing wherein the [inmate]incarcerated individual admits the charges, or where the hearing officer affirms one or more charges, a mandatory disciplinary surcharge in [the amount of \$5]accordance with departmental directive 4932 shall be assessed automatically against the [inmate]incarcerated individual.

Section 254.7 is amended as follows:

Section 254.7. Dispositions and mandatory disciplinary surcharge

(a) *Dispositions.*

(1) Where the [inmate]incarcerated individual admits the charges, or where the hearing officer affirms the charges on the basis of the evidence, the hearing officer may impose one or more of the following penalties:

(i) counsel and/or reprimand;

[(ii) loss of one or more specified privileges for a specified period, however correspondence may be withheld with a particular person only where the inmate has been involved in improper conduct in connection with correspondence with such person;

(iii)](ii) [loss of visiting privileges for a specified period where the affirmed charges involve improper conduct as a result of the inmate's presence or conduct in connection with a visiting, family reunion or special events program, or processing before or after participation in such program]any non-confinement sanction in accordance with departmental directive 4932;

(a) [a]A loss of visiting privileges may be imposed under this subparagraph [only where the affirmed charges involve the violation of any rule under rule series 100 assault and fighting; 101 sex offenses; 108 escape and abscondence; 113 contraband where such contraband consists of any weapon, narcotic, controlled substance or marijuana and/or paraphernalia, alcoholic beverage or intoxicant,

electronic device, or money; 114 smuggling; or 115 searches and frisks, including any attempt or conspiracy to violate any such rule; or a disposition under rule 1.00 for a criminal conviction relating to such conduct] for any confirmed charge;

[(b) a] A loss of visiting privileges with a specified visitor or visitors may be imposed where the misconduct involved only the [inmate]incarcerated individual and the specified visitor or visitors. Where the misconduct was not limited to the specified visitor or visitors a loss of visiting privileges with all visitors may be imposed. Misconduct involving Unacceptable Physical Conduct during which other visitors were subjected to exposure is misconduct which is not limited to only the [inmate]incarcerated individual and the specified visitor or visitors. Misconduct involving an attempt to introduce money, alcohol, marijuana, narcotic and other dangerous drugs, any item which is readily capable of being used to cause death or serious injury, or any item which may be used to aid in escape is misconduct which is not limited to only the [inmate]incarcerated individual and the specified visitor or visitors;

[(c) a] A loss of visiting privileges may be imposed under this subparagraph only for the length of time specified in [accordance with the provisions of the penalty chart contained in section 201.4(e) of this Title. Where the disposition imposes a loss of visiting privileges with all visitors for two years or more, a copy of the disposition shall be forwarded to the superintendent for a discretionary review under section 254.9 of this Part. Where the disposition includes an indefinite suspension of visiting privileges and the inmate does not appeal the disposition pursuant to section 254.8 of this Part, the visiting sanction shall nevertheless be reviewed by the director of special housing and inmate disciplinary program within six months of the hearing date. An inmate subject to a disciplinary sanction imposing a suspension of visiting privileges for a term over two years or indefinite suspension of visiting privileges may request reconsideration of the suspension of visiting privileges for a term over two years in accordance with section 201.6 of this Title] departmental directive 4932; and

[(d) t] The hearing officer may, within his or her discretion, limit an [inmate]incarcerated individual to noncontact visiting in lieu of suspending all visiting privileges;

(b) Restitution may be imposed for loss or intentional damage to property up to be made from an incarcerated individual's existing and future funds;

(c) The imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the incarcerated individual's housing unit or other designated area. Incarcerated individuals given such disposition who are participating in a regular work assignment shall not be required to work more than 8 hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming;

(d) Forfeiture of money confiscated as contraband; and

(e) Where applicable, removal from the elected inmate grievance resolution committee (IGRC) and/or loss of the privilege of participating as a voting member of the IGRC for a specified period of time.

(iii) segregated confinement for a specified period and

[(iv) loss of visiting privileges for a specified period not to exceed six months for a first offense and one year for any repeat offense where the affirmed charges involve the violation of one of the following rules, regardless of the location of the rule violation: 113.24 (prohibiting the use of narcotics, controlled substances, or marijuana, e.g., positive urinalysis); 113.25 (prohibiting making, possessing, selling or exchanging any narcotic, narcotic paraphernalia, controlled substance or marijuana); or 180.14 (requiring an inmate to comply with instructions by staff regarding urinalysis testing);

(v) confinement to a cell or room continuously or to a special housing unit continuously or on certain days during certain hours for a specified period;

(vi) confinement as authorized in subparagraph (iii) of this paragraph, but on a restricted diet administered in accordance with the provisions of section 304.2 of this Title;

(vii) restitution for loss or intentional damage to property to be made from an inmate's existing and future funds;

(viii) forfeiture of money confiscated as contraband;

(ix)](iv) loss of a specified period of good behavior allowance ("good time"), subject to restoration [as provided in Subchapter B of this Chapter;]upon substantial completion of the incarcerated individual's rehabilitation plan.

[(x) the imposition of one work task per day other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than eight hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming; and

(xi) where applicable, removal from the elected inmate grievance resolution committee (IGRC), and/or loss of the privilege of participating as a voting member of the IGRC for a specified period of time.

(2) Any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed unless the hearing officer advised the inmate that the penalty shall run concurrently.

(3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.

(4) The disciplinary hearing officer may suspend imposition of any penalty for a period of up to 180 days. Any such suspended penalty may be imposed by a subsequent disciplinary hearing or superintendent's hearing officer upon substantiating a charge of misbehavior in a subsequent hearing within the specified period.

(5)](2) As soon as possible, but not later than 24 hours after the conclusion of the hearing, the [inmate]incarcerated individual shall be given a written statement of the disposition of the charges. This statement shall set forth the evidence relied upon by the hearing officer in reaching his decision; the reasons for any penalties imposed; if applicable, pursuant to section 254.6(b) of this Part, how the [inmate's]incarcerated individual's mental condition or intellectual capacity was considered; and, if applicable, pursuant to section 254.6(h) of this Part, how age affected this disposition.

(b) *Mandatory disciplinary surcharge.* Upon the conclusion of a superintendent's hearing wherein the [inmate]incarcerated individual admits the charges, or where the hearing officer affirms one or more charges, a mandatory disciplinary surcharge in [the amount of \$5]accordance with departmental directive 4932 shall be assessed automatically against the [inmate]incarcerated individual.

Chapter V, Subchapter C, Part 270

Section 270.2 is amended as follows:

Section 270.2. Standards of [inmate]incarcerated individual behavior

[Implemented on September 1, 1988, t]The following is a list of prohibited behavior in all correctional facilities. Violation of any of the rules will result in appropriate disciplinary action.

A. PENAL LAW OFFENSES

| | | <i>Tier</i> |
|-----------|--|-------------|
| Rule 1.00 | Any Penal Law offense may be referred to law enforcement agencies for prosecution through the courts. In addition, departmental sanctions may be imposed based upon a criminal conviction. | II, III |

Note: This rule does not preclude an [inmate]incarcerated individual from being disciplined at any time for any violation of the following rules of conduct based upon the same incident.

B. INSTITUTIONAL RULES OF CONDUCT

| <i>1. Rule Series 100 Assault and Fighting.</i> | | | <i>Tier</i> |
|---|--------|--|-------------|
| i. | 100.10 | An [inmate] <u>incarcerated individual</u> shall not assault or inflict or attempt to inflict bodily harm upon any other [inmate] <u>incarcerated individual</u> . | II, III |
| ii. | 100.11 | An [inmate] <u>incarcerated individual</u> shall not assault or inflict or attempt to inflict bodily upon any staff member. | II, III |
| iii. | 100.12 | An [inmate] <u>incarcerated individual</u> shall not assault or inflict or attempt to inflict bodily harm upon any person not included in rules 100.10 and 100.11. | II, III |
| iv. | 100.13 | An [inmate] <u>incarcerated individual</u> shall not engage in fighting. | I, II, III |
| v. | 100.14 | An [inmate] <u>incarcerated individual</u> shall not practice or instruct others in martial arts (aikido, judo, karate, jujitsu, kung fu, t'ai chi ch'uan, etc.) | I, II |
| vi. | 100.15 | An [inmate] <u>incarcerated individual</u> shall not engage in unauthorized sparring, wrestling, body-punching, or other forms of disorderly conduct. | I, II |
| <i>2. Rule Series 101 Sex Offenses.</i> | | | <i>Tier</i> |
| i. | 101.10 | An [inmate] <u>incarcerated individual</u> shall not engage in or encourage, solicit or attempt to force another to engage in sexual acts. | I, II, III |
| ii. | 101.11 | An [inmate] <u>incarcerated individual</u> shall not intentionally and forcibly touch the sexual or other intimate parts of an employee for the purpose of degrading or abusing such employee or for the purpose of gratifying the [inmate] <u>incarcerated individual</u> 's sexual desire. Forcible touching includes squeezing, grabbing, pinching and kissing. | I, II, III |
| iii. | 101.20 | An [inmate] <u>incarcerated individual</u> shall not engage in lewd conduct by intentionally masturbating in the presence of an employee, or intentionally exposing the private parts of his or her body unless as part of a strip frisk, strip search, medical examination or other authorized purpose. | I, II, III |
| iv. | 101.21 | An [inmate] <u>incarcerated individual</u> shall not engage in physical contact with another [inmate] <u>incarcerated individual</u> . Prohibited conduct includes, but is not | I, II |

limited to, kissing, embracing or hand-holding.

| | | | |
|--|--------|--|-------------|
| v. | 101.22 | An [inmate] <u>incarcerated individual</u> shall not stalk an employee, visitor or other person. Stalking includes, but is not limited to, conduct directed at a specific employee, visitor or other person where the [inmate] <u>incarcerated individual</u> knows, or reasonably should know, that such conduct is likely to cause reasonable fear of material harm to the physical health, safety or property of such person. | I, II, III |
| <i>3. Rule Series 102 Threats.</i> | | | <i>Tier</i> |
| i. | 102.10 | An [inmate] <u>incarcerated individual</u> shall not, under any circumstances make any threat, spoken, in writing, or by gesture. | I, II, III |
| <i>4. Rule Series 103 Bribery and Extortion.</i> | | | <i>Tier</i> |
| i. | 103.10 | An [inmate] <u>incarcerated individual</u> shall not bribe or extort or attempt to bribe or extort any person. | I, II |
| ii. | 103.20 | An [inmate] <u>incarcerated individual</u> shall not request or solicit goods or services from any business or any person other than an immediate family member without the consent and approval of the facility superintendent or designee. | I, II |
| <i>5. Rule Series 104 Riot, Disturbances and Demonstrations.</i> | | | <i>Tier</i> |
| i. | 104.10 | An [inmate] <u>incarcerated individual</u> shall not conspire or take any action which is intended to or results in the takeover of any area of the facility. | II, III |
| ii. | 104.11 | An [inmate] <u>incarcerated individual</u> shall not engage in any violent conduct or conduct involving the threat of violence either individually or in a group. | II, III |
| iii. | 104.12 | An [inmate] <u>incarcerated individual</u> shall not lead, organize, participate, or urge other [inmate] <u>incarcerated individuals</u> to participate, in a work-stoppage, sit-in, lock-in, or other actions which may be detrimental to the order of facility. | II, III |
| iv. | 104.13 | An [inmate] <u>incarcerated individual</u> shall not engage in conduct which disturbs the order of any part of the facility. This includes, but is not limited to, loud talking in a mess hall, program area or corridor, talking after the designated facility quiet time, playing a radio, television or tape player without a headphone or through a headphone in a loud or improper manner, or | I, II |

playing a musical instrument in a loud or improper manner.

| 6. Rule Series 105 Unauthorized Assembly or Activity. | | | Tier |
|---|--------|---|------------|
| i. | 105.10 | An [inmate] <u>incarcerated individual</u> shall not form a group of [inmate] <u>incarcerated individuals</u> or join an assembly of [inmate] <u>incarcerated individuals</u> without authorization. The size of the group is determined by local policy. | I, II |
| ii. | 105.11 | An [inmate] <u>incarcerated individual</u> shall not conduct a religious service or make a speech or address without authorization by the superintendent or designee. | I, II |
| iii. | 105.12 | [Reserved] | |
| iv. | 105.13 | An [inmate] <u>incarcerated individual</u> shall not engage in or encourage others in gang activities or meetings, or display, wear, possess, distribute or use gang insignia or materials including, but not limited to, printed or handwritten gang or gang related material. | I, II, III |
| <p><i>Note:</i> For purposes of this rule, a gang is a group of individuals, having a common identifying name, sign, symbol or colors, who have individually or collectively engaged in a pattern of lawlessness (e.g., violence, property destruction, threats of harm, intimidation, extortion, or drug smuggling) in one or more correctional facilities or that are generally recognized as having engaged in a pattern of lawlessness in the community as a whole. For purposes of this rule, printed or handwritten gang or gang related material is written material that, if observed in the [inmate]<u>incarcerated individual</u>'s possession, could result in an inference being drawn about the [inmate]<u>incarcerated individual</u>'s gang affiliation, but excludes published material that the [inmate]<u>incarcerated individual</u> has obtained through the facility library or that has been approved for the [inmate]<u>incarcerated individual</u> to possess through the media review process.</p> | | | |
| v. | 105.14 | An [inmate] <u>incarcerated individual</u> shall not engage in or encourage others to engage in unauthorized organizational activities or meetings, or possess printed or handwritten material relating to an unauthorized organization where such material advocates either expressly or by clear implication, | I, II, III |

violence based upon race, religion, sex, sexual orientation, creed, law enforcement status or violence or acts of disobedience against department employees or that could facilitate organizational activity within the institution by an unauthorized organization.

Note: For purposes of this rule, an unauthorized organization is any organization which has not been approved by the deputy commissioner for program services. Printed or handwritten material that could facilitate organizational activity includes, but is not limited to, a membership roster, organizational chart, constitution or bylaws. This rule excludes possession of published material that the [inmate]incarcerated individual has obtained through the facility library or that has been approved for the [inmate]incarcerated individual to possess through the media review process. During the pendency of an application to obtain authorization for a proposed [inmate]incarcerated individual organization, the rule also excludes specific printed or handwritten material that the Deputy Superintendent for Programs or higher ranking employee has requested in writing that the [inmate]incarcerated individual submit as part of the application process.

| <i>7. Rule Series 106 Refusal to Obey a Direct Order.</i> | | | <i>Tier</i> |
|--|--------|--|--------------|
| i. | 106.10 | AN <u>[INMATE]INCARCERATED INDIVIDUAL</u> SHALL OBEY ALL ORDERS OF DEPARTMENT PERSONNEL PROMPTLY AND WITHOUT ARGUMENT. | I, II |
| ii. | 106.11 | An <u>[inmate]incarcerated individual</u> shall promptly obey an order by department personnel to provide a DNA sample | I, II |
| <i>8. Rule Series 107 Interference with an Employee or Other Person.</i> | | | <i>Tier</i> |
| i. | 107.10 | An <u>[inmate]incarcerated individual</u> shall not physically or verbally obstruct or interfere with an employee at any time. | I, II, III |
| ii. | 107.11 | An <u>[inmate]incarcerated individual</u> shall not harass an employee or any other person verbally or in writing. | I, II[, III] |

Prohibited conduct includes, but is not limited to, using insolent, abusive, or obscene language or gestures, or writing or otherwise communicating messages of a personal nature to an employee or any other person including a person subject of an order of protection with the [inmate]incarcerated individual or who is on the [inmate]incarcerated individual's negative correspondence list.

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| iii. | 107.20 | An [inmate] <u>incarcerated individual</u> shall not lie or provide an incomplete, misleading and/or false statement or information. | I, II |
| iv. | 107.21 | An [inmate] <u>incarcerated individual</u> shall not file or record any document or instrument of any description which purports to create a lien or record a security interest of any kind against the person or property of any officer or employee of the department, the State of New York or the United States absent prior written authorization from the superintendent or a court order authorizing such filing. | I, II |
| <i>9. Rule Series 108 Escape and Abscondence.</i> | | | <i>Tier</i> |
| i. | 108.10 | An [inmate] <u>incarcerated individual</u> shall not escape, attempt to escape, conspire to, or be an accessory to an escape from any correctional facility or correctional custody. | III |
| ii. | 108.11 | An [inmate] <u>incarcerated individual</u> shall not exceed the authorized limits of travel on any work release or furlough-type program. | I, II |
| iii. | 108.12 | An [inmate] <u>incarcerated individual</u> shall not exceed any time limit imposed on any work release or furlough-type program. | I, II |
| iv. | 108.13 | An [inmate] <u>incarcerated individual</u> shall not be in possession of any article or paraphernalia which gives reasonable grounds to believe escape is planned. | II, III |
| v. | 108.14 | An [inmate] <u>incarcerated individual</u> shall comply with temporary release programming rules and regulations. | I, II |
| vi. | 108.15 | An [inmate] <u>incarcerated individual</u> shall not abscond, | II, III |

attempt to abscond, conspire to abscond, or be an accessory to an abscondence from temporary release from a correctional facility or correctional custody. An [inmate]incarcerated individual is guilty of absconding when, as a temporary release participant, he or she intentionally fails to return at or before the time prescribed for return.

| <i>10. Rule Series 109 [inmate]Incarcerated individual Movement.</i> | | | <i>Tier</i> |
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| i. | 109.10 | An <u>[inmate]incarcerated individual</u> shall not be out of place in any area of the facility. | I, II |
| ii. | 109.11 | An <u>[inmate]incarcerated individual</u> shall not leave an assigned area without authorization. | I, II |
| iii. | 109.12 | An <u>[inmate]incarcerated individual</u> shall follow all facility regulations and staff directions relating to movement within the facility. This includes, but is not limited to, seating, lock-in, lock-out, call slip procedures, and all activities of a similar nature. | I, II |
| iv. | 109.13 | An <u>[inmate]incarcerated individual</u> who is on an outside work assignment, such as a community service project or outside ground detail, shall not leave his or her assigned area or communicate with members of the public without authorization. | I, II |
| v. | 109.14 | An <u>[inmate]incarcerated individual</u> shall wear religious robes and garments at scheduled and approved religious ceremonies or services only. | I, II |
| vi. | 109.15 | An <u>[inmate]incarcerated individual</u> shall accept double-cell assignments when such an assignment is directed by facility staff. | I, II |
| <i>11. Rule Series 110 [Inmate]Incarcerated individual Identification and Grooming.</i> | | | <i>Tier</i> |
| i. | 110.10 | Unless otherwise directed, an <u>[inmate]incarcerated individual</u> shall at all times carry his or her departmental ID card and promptly produce the ID at the direction of any departmental employee. | I, II |
| ii. | 110.20 | An <u>[inmate]incarcerated individual</u> shall not alter, | I, II |

deface, or in any other way tamper with the issued ID card. Whenever replacement is required, as a result of this action, the replacement cost will be borne by the [inmate]incarcerated individual. Refusal to voluntarily pay for replacement cost may result in restitution being imposed through the disciplinary process.

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| iii. | 110.21 | An <u>[inmate]incarcerated individual</u> shall not be in possession of any type of an identification card or identification paper other than those authorized. | I, II |
| iv. | 110.30 | An <u>[inmate]incarcerated individual</u> shall report the loss of his or her ID card promptly to an employee. Reimbursement costs may be imposed. | I, II |
| v. | 110.31 | An <u>[inmate]incarcerated individual</u> shall pay the cost of a replacement ID card whenever the <u>[inmate]incarcerated individual</u> 's appearance is changed as a result of a beard, mustache, or change in hair length or color. Refusal to voluntarily pay for replacement cost may result in restitution being imposed through the disciplinary process. | I, II |
| <i>12. Rule Series 111 Impersonation.</i> | | | <i>Tier</i> |
| i. | 111.10 | An <u>[inmate]incarcerated individual</u> shall not impersonate any employee or any other person in any manner. | II, III |
| ii. | 111.11 | An <u>[inmate]incarcerated individual</u> shall not be in possession of any security key, badge, employee identification or employee clothing. | II, III |
| <i>13. Rule Series 112 Count Procedures.</i> | | | <i>Tier</i> |
| i. | 112.10 | An <u>[inmate]incarcerated individual</u> shall not cause a miscount. | I, II, III |
| ii. | 112.20 | An <u>[inmate]incarcerated individual</u> shall not delay the count. | I, II |
| iii. | 112.21 | An <u>[inmate]incarcerated individual</u> shall comply with all facility count procedures. | I, II |
| iv. | 112.22 | An <u>[inmate]incarcerated individual</u> shall not obstruct visibility into his or her cell, room or cube. | I, II |

| 14. Rule Series 113 Contraband. | | | Tier |
|---------------------------------|--------|--|--------------|
| i. | 113.10 | An [inmate] <u>incarcerated individual</u> shall not make, possess, sell or exchange any item that may be classified as a weapon or dangerous instrument by description, use or appearance. A dangerous instrument is any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing bodily harm. | II, III |
| ii. | 113.11 | An [inmate] <u>incarcerated individual</u> shall not possess any authorized item that has been altered in any manner so as to change its original intent and/or purpose. | I, II |
| iv. | 113.14 | An [inmate] <u>incarcerated individual</u> shall not possess outdated or unauthorized types or quantities of medication, nor shall an [inmate] <u>incarcerated individual</u> sell, exchange or provide any medication to anyone. | I, II |
| v. | 113.15 | An [inmate] <u>incarcerated individual</u> shall not purchase, sell, loan, give or exchange a personally owned article without authorization. | I, II |
| vi. | 113.16 | An [inmate] <u>incarcerated individual</u> shall not be in possession of stamps in excess of \$22.50 in value, money, credit card, credit card numbers, check or unauthorized valuable or property. | I, II[, III] |
| vii. | 113.17 | An [inmate] <u>incarcerated individual</u> shall not be in possession of jewelry other than that which is authorized by the facility. | I, II |
| viii. | 113.18 | An [inmate] <u>incarcerated individual</u> shall not be in possession of a tool without authorization. | I, II, III |
| ix. | 113.19 | An [inmate] <u>incarcerated individual</u> shall not possess tobacco products in excess of an amount authorized by the facility. An [inmate] <u>incarcerated individual</u> may not have more than two packages of cigarettes on his or her person other than for transporting tobacco products from the commissary or package room to | I, II |

the housing unit for storage.

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| x. | 113.20 | An [inmate] <u>incarcerated individual</u> shall not possess State clothing or bedding in excess of authorized issue. The altering of State-issued clothing or bedding is prohibited. An [inmate] <u>incarcerated individual</u> shall be required to pay for State clothing or bedding that has been altered without authorization. | I, II |
| xi. | 113.21 | An [inmate] <u>incarcerated individual</u> shall not possess literature or any other material which has been disapproved by the Media Review Committee. | I, II |
| xii. | 113.22 | An [inmate] <u>incarcerated individual</u> shall not use or possess an article in an area where its use or possession is prohibited. | I, II |
| xiii. | 113.23 | In addition to those items of contraband specifically identified by this rule series, an [inmate] <u>incarcerated individual</u> shall not possess any item unless it has been specifically authorized by the superintendent or designee, the rules of the department or the local rules of the facility. | I, II, III |
| xiv. | 113.24 | An [inmate] <u>incarcerated individual</u> shall not use or be under the influence of any narcotics or controlled substances unless prescribed by a health service provider and then only in the amount prescribed. <i>Note:</i> For purposes of this rule, a controlled substance is any substance listed in section 3306 of the Public Health Law; section 812 of title 21 of the United States Code; sections 1308.11 through 1308.15 of title 21 of the Code of Federal Regulations; or section 9.1 of Title 10 NYCRR. | I, II |
| xvi. | 113.26 | An [inmate] <u>incarcerated individual</u> shall not, without written authorization of the superintendent, solicit, possess or exchange personal identifying information (e.g. social security number, home address, private e-mail address or home telephone number) belonging to a person who is a present or former employee of the department or presently or formerly employed in a department facility, or to any member of the person's household, unless the [inmate] <u>incarcerated individual</u> is an immediate family member of such person. | II, III |

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| xvii. | 113.27 | An [inmate] <u>incarcerated individual</u> shall not solicit, possess or exchange any disciplinary or grievance document pertaining to another [inmate] <u>incarcerated individual</u> , or any document which contains crime and sentence information pertaining to another [inmate] <u>incarcerated individual</u> who is not a codefendant, without authorization from the superintendent. | I, II |
| xviii. | 113.28 | An [inmate] <u>incarcerated individual</u> shall not possess any description or depiction of any correctional facility; any facility post a description, staffing chart or related document; any Directive with a distribution code of "D" or any corresponding topical manual or facility policy and procedure. | II, III |
| xix. | 113.29 | An [inmate] <u>incarcerated individual</u> shall not possess poppy seeds or any product containing poppy seeds. | I, II |
| xx. | 113.30 | An [inmate] <u>incarcerated individual</u> shall not possess any Uniform Commercial Code (UCC) article 9 form, including but not limited to any financing statement (UCC1, UCC1Ad, UCC1AP, UCC3, UCC3Ad, UCC3AP, UCC1CAAd), correction statement (UCC5) or information request (UCC11), whether printed, copied, typed or hand written, or any document concerning a scheme involving an [inmate] <u>incarcerated individual</u> 's "strawmen," "House Joint Resolution 192 of 1933," the "Redemptive Process," "Acceptance for Value" presentments or document indicating copyright or attempted copyright of an [inmate] <u>incarcerated individual</u> 's name absent prior written authorization from the superintendent. | I, II |
| xxi. | 113.31 | An [inmate] <u>incarcerated individual</u> shall not use, possess or be under the influence of any alcoholic beverage or intoxicant, yeast, or any other fermenting agent. | I, II[, III] |
| xxii. | 113.32 | An [inmate] <u>incarcerated individual</u> shall not make, sell, or exchange any alcoholic beverage or intoxicant. Sale or exchange of yeast or any other fermenting agent is prohibited. An [inmate] <u>incarcerated individual</u> shall not conspire with any person to introduce such items into the facility. | I, II, III |
| xxiii. | 113.33 | An [inmate] <u>incarcerated individual</u> shall not make, | I, II, III |

possess, sell or exchange any narcotic, narcotic paraphernalia, controlled substance or marijuana.

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| xxiv. | 113.34 | An [inmate] <u>incarcerated individual</u> shall not conspire with any person to introduce any narcotic, narcotic paraphernalia, controlled substance or marijuana into the facility. | I, II, III |
| <i>15. Rule Series 114 Smuggling.</i> | | | <i>Tier</i> |
| i. | 114.10 | An [inmate] <u>incarcerated individual</u> shall not smuggle or attempt to smuggle or solicit others to smuggle any item in or out of the facility or from one area to another. | I, II, III |
| <i>16. Rule Series 115 Searches and Frisks.</i> | | | <i>Tier</i> |
| i. | 115.10 | An [inmate] <u>incarcerated individual</u> shall comply with all frisk and search procedures. | I, II[, III] |
| <i>17. Rule Series 116 Destruction of, Tampering with, and Theft of Property.</i> | | | <i>Tier</i> |
| i. | 116.10 | An [inmate] <u>incarcerated individual</u> shall not lose, destroy, steal, misuse, damage or waste any type of State property. | I, II[, III] |
| ii. | 116.11 | An [inmate] <u>incarcerated individual</u> shall not alter, tamper with or attempt to repair any type of State or personal property without authorization. | I, II |
| iii. | 116.12 | An [inmate] <u>incarcerated individual</u> shall not alter, forge or counterfeit any document. An [inmate] <u>incarcerated individual</u> shall not distribute or be in possession of any departmental document without authorization. | I, II[, III] |
| iv. | 116.13 | An [inmate] <u>incarcerated individual</u> shall not steal, destroy or intentionally damage any property belonging to others or possess any stolen property. | I, II[, III] |
| <i>18. Rule Series 117 Explosion or Explosive Devices.</i> | | | <i>Tier</i> |
| i. | 117.10 | An [inmate] <u>incarcerated individual</u> shall not cause or attempt to cause an explosion. The possession of an explosive device, material that can be used to make an explosive device, or material which depicts or describes the construction or use of an explosive device, is prohibited. | II, III |

| 19. Rule Series 118 Creating a Fire, Health or Safety Hazard. | | | Tier |
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| i. | 118.10 | An [inmate] <u>incarcerated individual</u> shall not start or attempt to start a fire unless directed to do so by facility staff. | II, III |
| ii. | 118.20 | An [inmate] <u>incarcerated individual</u> shall not tattoo or otherwise permanently mark his or her or another's body, or allow his or her body to be tattooed or permanently marked by another. An [inmate] <u>incarcerated individual</u> shall not be in possession of an instrument or device used for the purpose of making tattoos. | I, II |
| iii. | 118.21 | An [inmate] <u>incarcerated individual</u> shall not create a fire, health or safety hazard in any area of the facility by improperly storing or using flammable materials or other property, in his or her living quarters or any other area of the facility. | I, II[, III] |
| iv. | 118.22 | An [inmate] <u>incarcerated individual</u> shall not commit an unhygienic act such as spitting, urinating or defecating on the floor or any other area; propelling urine, feces, bodily fluids, water, or food; or storing urine, feces or bodily fluids. | I, II, III |
| v. | 118.23 | An [inmate] <u>incarcerated individual</u> shall promptly report illness or injury to a facility employee. | I, II |
| vi. | 118.24 | An [inmate] <u>incarcerated individual</u> shall follow posted safety regulations. | I, II |
| viii. | 118.30 | An [inmate] <u>incarcerated individual</u> shall maintain the cleanliness and orderliness of his her living quarters, clothing and person. | I, II |
| ix. | 118.31 | An [inmate] <u>incarcerated individual</u> shall not alter, rewire, tamper or attempt to repair electrical outlets or any electrical device. | I, II |
| x. | 118.32 | An [inmate] <u>incarcerated individual</u> shall participate in a fire drill or fire alarm in a prompt and orderly fashion. | I, II |
| xi. | 118.33 | An [inmate] <u>incarcerated individual</u> shall not intentionally cause flooding in his or her housing area or other part of the facility. | I, II[, III] |

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| <i>20. Rule Series 119 False Alarms.</i> | | | <i>Tier</i> |
| i. | 119.10 | An [inmate] <u>incarcerated individual</u> shall not make a false report of a fire, emergency, disturbance or other threat to the safety of a facility. | II, III |
| ii. | 119.11 | An [inmate] <u>incarcerated individual</u> shall not tamper with any fire or extinguishing device unless authorized by a facility staff member. | I, II, III |
| <i>21. Rule Series 120 Gambling.</i> | | | <i>Tier</i> |
| i. | 120.20 | An [inmate] <u>incarcerated individual</u> shall not engage in any form of gambling, betting or wagering, or be in possession of gambling paraphernalia. | I, II |
| <i>22. Rule Series 121 Abuse of Telephone Privileges.</i> | | | <i>Tier</i> |
| i. | 121.10 | An [inmate] <u>incarcerated individual</u> shall not communicate by telephone with any department employee without the authorization of the superintendent or designee. | I, II |
| ii. | 121.11 | An [inmate] <u>incarcerated individual</u> shall not engage in a telephone call to a telephone number which has been connected through call-forwarding or a call-forwarding service. Telephone calls and telephone conversations shall be restricted to the telephone number dialed or otherwise placed by or for the [inmate] <u>incarcerated individual</u> . Telephone call-forwarding, the use of a call forwarding service or other third-party phone call function, and the use of a credit card to place a call are prohibited. | I, II |
| iii. | 121.12 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by the staff regarding facility telephone programs pursuant to the requirements of departmental Directive No. 4423 (7 NYCRR Part 723). | I, II |
| iv. | 121.13 | An [inmate] <u>incarcerated individual</u> shall not use facility telephones without the authorization of facility staff. An [inmate] <u>incarcerated individual</u> in an outside work | I, II |

gang or other type of supervised community project shall not use an[d] outside telephone without the authorization of facility staff.

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| v. | 121.14 | An [inmate] <u>incarcerated individual</u> shall not exchange a personal identification number (PIN), or use the PIN of another [inmate] <u>incarcerated individual</u> . | I, II |
| <i>23. Rule Series 122 Smoking.</i> | | | <i>Tier</i> |
| i. | 122.10 | An [inmate] <u>incarcerated individual</u> may only smoke outdoors in designated areas. | I, II |
| <i>25. Rule Series 124 Mess Hall or Dining Areas.</i> | | | <i>Tier</i> |
| iii. | 124.12 | An [inmate] <u>incarcerated individual</u> shall take all silverware or plasticware offered on the mess hall line and dispose of such items in accordance with facility policy. | I, II |
| iv. | 124.13 | An [inmate] <u>incarcerated individual</u> shall attend all mandatory meals as designated by facility policy. | I, II |
| <i>26. Rule Series 180 Miscellaneous Rules and Regulations.</i> | | | <i>Tier</i> |
| i. | 180.10 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding facility visiting procedures pursuant to the requirements of departmental Directive No. 4403 (7 NYCRR Part 200). | I, II[, III] |
| ii. | 180.11 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding facility correspondence procedures pursuant to requirements of departmental Directive Nos. 4422 and 4421 (7 NYCRR Parts 720 and 721). | I, II |
| iii. | 180.12 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding facility package procedures pursuant to the requirements of departmental Directive No. 4911 (7 NYCRR Part 724). | I, II |

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| iv. | 180.13 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding Family Reunion Program pursuant to the requirements of departmental Directive No. 4500 (7 NYCRR Part 220). | I, II[, III] |
| v. | 180.14 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding urinalysis testing pursuant to the requirements of departmental Directive No. 4937 (7 NYCRR Part 1020). This includes providing a urine sample when ordered to do so. | I, II[, III] |
| vii. | 180.17 | An [inmate] <u>incarcerated individual</u> may not provide legal assistance to another [inmate] <u>incarcerated individual</u> without prior approval of the superintendent or designee. An [inmate] <u>incarcerated individual</u> shall not receive any form of compensation for providing legal assistance. | I, II |
| viii. | 180.18 | An [inmate] <u>incarcerated individual</u> shall accept a program assignment in accordance with established facility program committee procedures. | I, II |
| ix. | 180.19 | An [inmate] <u>incarcerated individual</u> shall comply with and follow the guidelines and instructions given by staff regarding alcohol screening tests. This includes providing a urine sample or taking a field test when ordered to do so. | I, II[, III] |
| <i>27. Rule Series 181 Disciplinary Hearings.</i> | | | <i>Tier</i> |
| i. | 181.10 | An [inmate] <u>incarcerated individual</u> shall comply with the dispositions imposed by a hearing officer in a Tier I, Tier II and Tier III hearings. | I, II |

Chapter VI, Part 300-302 and 304

Section 300.2, Subdivision (b) is amended as follows:

(b) A special housing unit (SHU), in maximum security facilities as well as in designated medium security facilities, shall consist of single- or double-occupancy cells grouped so as to provide separation from the general population, and may be used to house

[inmate]incarcerated individuals confined to such units pursuant to Part 301 of this Title[as well as such other inmates as approved by the commissioner or his designee].

Section 301.1 is amended as follows:

Section 301.1. Purpose

Incarcerated individuals may be admitted to special housing units for any of the several situations described in this Part. Incarcerated individuals in special populations as defined in 7 NYCRR § 1.5 shall not be placed in segregated confinement for any length of time.

[No incarcerated individual may be placed in segregated confinement as a result of a disciplinary hearing, administrative segregation, protective custody, keeplock, or other admissions in accordance with Section 301.7 for longer than necessary and: (i) effective on and after October 1, 2022, for no more than ninety (90) days; (ii) effective on and after April 1, 2023, for no more than sixty (60) days; and (iii) effective on and after October 1, 2023, for no more than thirty (30) days. Upon reaching this limit, the incarcerated individual must be released from segregated confinement or diverted to a residential rehabilitation unit or a step-down unit. Such admission to a residential rehabilitation unit or step-down unit shall occur as expeditiously as possible and in no case longer than seventy-two hours from the time transfer should occur]No incarcerated individual may be placed in segregated confinement (SHU) for longer than necessary and for no more than 15 consecutive days or 20 total days in any 60-day period, except where a specific act constitutes a violent felony act, if occurring more than once in a 60-day period, the incarcerated individual may serve an additional 15 consecutive days but must spend at least 15-days in a Residential Rehabilitation Unit (RRU) in between each placement in SHU. Incarcerated individuals will be transferred or moved to an RRU if they have additional confinement time after completing 15-days in SHU.

Section 301.3, Subdivision (a) is amended as follows:

(a) Detention admissions may be used in the following cases:

(1) in the case of an [inmate]incarcerated individual who is awaiting initial appearance before or determination of a [disciplinary hearing or]superintendent's hearing[;], if a security supervisor, with written approval of the superintendent or designee, reasonably believes the person fits the criteria for segregated confinement in subparagraph (ii) of paragraph (k) of section 137 of the Correction Law.

[(2) in cases where an inmate is received from another correctional facility and his record in the other facility raises a reasonable question as to whether he presently is ready to adhere to the department's rules and policies governing inmate behavior; or

(3) in cases where an inmate is awaiting transfer from Southport Correctional Facility or a double-celled SHU.]

Subdivision (b) is repealed.

Subdivision (c) is renumbered subdivision (b) and newly renumbered subdivision (b) is amended to read as follows:

[(c)b] In the case of any detention admission, if a misbehavior report has been issued, the provisions of section 251-2.2 of this Title shall be applicable. [If a misbehavior report or a notice directing involuntary protective custody or administrative segregation has not been issued,]If pursuant to Part 251-1.6 (b) of this title, the facility's deputy superintendent of security or a watch commander shall review the detention admission [inmate]incarcerated individual's status at least once every 24 hours.

Section 301.4 is repealed.

Section 301.5 is repealed.

Section 301.6 is repealed.

Section 301.7 is repealed.

Section 302.1, Subdivision (i) is amended as follows:

(i) *Other privileges.*

(1) Visiting. Except as otherwise provided by this Part, no [inmate]incarcerated individual shall be deprived of the visiting privileges available to [inmate]incarcerated individuals in the general population.

(i) One nonlegal visit per week will be permitted during visiting hours scheduled by the facility. There will be no limits on the number of legal visits, subject to reasonable scheduling.

(ii) Visits for persons in special housing units shall be in accordance with any special precautions deemed necessary or appropriate by the superintendent of the facility. Such special precautions may include, but are not limited to, restriction to noncontact visiting for all visits or with a specified visitor or visitors; denial of visiting with a specified visitor or visitors; or other special precautions to maintain the safety, security or good order of the department or its correctional facilities. However, no employee shall be permitted to monitor the content of conversation between an [inmate]incarcerated individual and his legal or spiritual advisor.

(iii) An [inmate]incarcerated individual serving a penalty of confinement to a special housing unit pursuant to Part 254 of this Title shall be subject to the provisions regarding visitation contained in this Part, regardless of the location of actual confinement.

(2) [Telephone calls are prohibited, except for emergency calls and legal telephone calls as approved by the superintendent.]An incarcerated individual shall be permitted to make at least one personal phone call within twenty-four hours of placement in segregated confinement, and at weekly intervals thereafter for the duration of such confinement, except when doing so would create an unacceptable risk to the safety

and security of incarcerated individuals or staff. Emergency and legal telephone calls are permitted, as approved by the superintendent.

(3) No packages may be received at any time by an [inmate]incarcerated individual in an SHU except [books, periodicals and legal materials.]in accordance with departmental directive 4933.

Section 304.1 is amended to add a new subdivision (c) as follows:

(c) Incarcerated individuals in segregated confinement shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation. However, if an incarcerated individual commits a specific act while housed in a SHU and poses a significant risk, their participation in certain programs may be restricted but they must still be provided with at least 4 hours out-of-cell time daily, of which 2 hours are therapeutic programming and 2 hours of recreation.

Section 304.2, Subdivisions (b), (c), (d), (e), and (f) are repealed.

Section 304.3 is amended as follows:

Section 304.3. Exercise

[Inmate]Incarcerated individuals confined in the SHU must be permitted one hour of outdoor exercise daily, exclusive of the time it takes to go to and return from the exercise area, beginning on the day following admission.

(a) [Inmate]Incarcerated individuals normally will be offered the opportunity for outdoor exercise despite weather conditions. If during the exercise period the weather significantly deteriorates, the [inmate]incarcerated individual may request and shall be permitted to return to his/her cell. If this occurs, the outdoor exercise opportunity for that day will be considered to have been satisfied.

(b) Except at double-celled SHU's, coats and galoshes or rubbers will be maintained on the unit and will be provided during exercise periods in the event of cold or inclement weather.

(c) On those rare occasions when the weather so reduces visibility that it significantly impacts the ability of security staff to visually observe the exercise area (i.e., fog, blizzard, etc.), exercise may be curtailed for the duration of the extreme weather conditions by issuance of a deprivation order in accord with section 305.2 of this Title.

Subdivision (d) is repealed.

Section 304.4, Subdivisions (a), (b), (c), and (d) are amended as follows:

(a) A qualified medical practitioner (physician, physician's assistant, registered nurse) will be required to examine each [inmate]incarcerated individual upon admission to an SHU in accord with section 302.1(b) of this Title.

(b) A qualified medical practitioner (as listed above) is required to visit the SHU once in every 24-hour period to examine into the state of health of the [inmate]incarcerated individuals confined in such unit.

(c) Sick call will be conducted daily.

(1) The officer in charge will prepare a list of all [inmate]incarcerated individuals who request to see a medical practitioner.

(2) Any [inmate]incarcerated individual who requests to see a medical practitioner will be permitted an opportunity to do so in accord with all good security precautions.

(3) The medical encounter will be recorded in each [inmate]incarcerated individual's medical file and in the appropriate SHU file.

(d) If an [inmate]incarcerated individual has a medical complaint, requests health services other than at sick call, or a medical emergency occurs, the facility health services unit will be contacted immediately. The response/action taken by health services staff shall be logged.

Subdivision (e) is repealed.

Subdivision (f) is renumbered Subdivision (e) and newly renumbered Subdivision (e) is amended as follows:

([f]e) To the extent consistent with the safety and good order of the facility, staff shall respect an [inmate]incarcerated individual's right to privacy during medical encounters and the confidential nature of communications between [inmate]incarcerated individuals and health care providers.

Section 304.7 is amended to add new Subdivision (h) as follows:

(h) Incarcerated individuals may utilize law library tablets in accordance with departmental directive 4933.

Chapter VI, Part 315

Section 315.2 is amended as follows:

Section 315.2. Admissions

(a) Upon placement of an [I]incarcerated individual[s admitted] into a residential rehabilitation unit, they shall be [offered the following]assessed as follows:

(1) [at least five hours of out-of-cell programming, activities, or recreation five days per week, excluding holidays, and at least two hours of recreation on the remaining days; and]at a level one or level two facility, a suicide prevention screening instrument shall be administered by staff from the department, or the office of mental health, who has been trained for that purpose. If such a screening instrument reveals that the incarcerated

individual is at risk of suicide, a mental health clinician shall be consulted, and appropriate safety precautions shall be taken. Additionally, within one business day of the placement of such an incarcerated individual into a residential rehabilitation unit at a level one or level two facility, the incarcerated individual shall be assessed by a mental health clinician.

(2) [out-of-cell programs and activities that promote personal development and group engagement, addressing underlying causes of problematic behavior resulting in placement in segregated confinement or a residential rehabilitation unit, and helping prepare for discharge from the unit to general confinement or the community; and]at a level three or level four facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted, and appropriate safety precautions shall be taken. All incarcerated individuals placed in a residential rehabilitation unit at a level three or level four facility shall be assessed by a mental health clinician, within seven days of such placement into segregated confinement.

(3) [the opportunity to earn additional privileges under the progressive inmate movement system.]at the initial assessment, if the mental health clinician finds that an incarcerated individual suffers from a serious mental illness, as defined in Correction Law Section 137(6)(e), that person shall be diverted or removed from segregated confinement or a residential rehabilitation unit and a recommendation shall be made whether exceptional circumstances exist, as described in paragraph (5) of this subdivision.

(i) In a facility with a joint case management committee, such recommendation shall be made by such committee. In a facility without a joint case management committee, the recommendation shall be made jointly by a committee consisting of the facility's highest ranking mental health clinician, the deputy superintendent for security, and the deputy superintendent for program services or their equivalents.

(ii) Any such recommendation shall be reviewed by the joint central office review committee. The administrative process described in this clause shall be completed within seven days of the initial assessment, and if the result of such process is that the incarcerated individual should be removed from segregated confinement or a residential rehabilitation unit, such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process.

(iii) Nothing in this section shall permit the placement of an incarcerated person with serious mental illness into segregated confinement at any time, even for the purposes of assessment.

(4) [An incarcerated individual can be denied out-of-cell activities described in this section, if the commissioner or his designee determines that the incarcerated individual's participation in such activities presents an imminent risk of danger to the incarcerated

individual or to others. If an incarcerated individual with serious mental illness is not diverted or removed to a residential mental health treatment unit, such incarcerated individual shall be diverted to a residential rehabilitation unit and reassessed by a mental health clinician within fourteen days of the initial assessment and at least once every fourteen days thereafter. After each such additional assessment, a recommendation as to whether such incarcerated individual should be removed from residential rehabilitation unit shall be made and reviewed according to the process set forth in paragraph (3) of this subdivision.

(5) A recommendation or determination whether to remove an incarcerated individual from a residential rehabilitation unit shall take into account the assessing mental health clinician's opinions as to the incarcerated individual's mental condition and treatment needs, and shall also take into account any safety and security concerns that would be posed by the incarcerated individual's removal, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services, or privileges in a residential mental health treatment unit. A recommendation or determination shall direct the incarcerated individual's removal from segregated confinement or a residential rehabilitation unit except in the following exceptional circumstances:

(i) when the reviewer finds that removal would pose a substantial risk to the safety of the incarcerated individual or other persons, or a substantial threat to the security of the facility, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services, or privileges in a residential mental health treatment unit; or

(ii) when the assessing mental health clinician determines that such placement is in the incarcerated individual's best interests based on their mental condition and that removing such incarcerated individual to a residential mental health treatment unit would be detrimental to their mental condition. Any determination not to remove an incarcerated individual with serious mental illness from a residential rehabilitation unit shall be documented in writing and include the reasons for the determination.

(6) Incarcerated individuals with serious mental illness who are not diverted or removed from a residential rehabilitation unit shall be offered a heightened level of mental health care, involving a minimum of three hours daily of out-of-cell therapeutic treatment and programming. This heightened level of care shall not be offered only in the following circumstances:

(i) The heightened level of care shall not apply when an incarcerated individual with serious mental illness does not, in the reasonable judgment of a mental health clinician, require the heightened level of care. Such determination shall be documented with a written statement of the basis of such determination and shall be reviewed by the Central New York Psychiatric Center clinical director or their designee. Such a determination is subject to change should the incarcerated individual's clinical status change. Such determination shall be reviewed and documented by a mental health clinician every thirty days, and in consultation with the Central New York Psychiatric Center clinical director or their designee not less

than every ninety days.

(ii) The heightened level of care shall not apply in exceptional circumstances when providing such care would create an unacceptable risk to the safety and security of incarcerated individuals or staff. Such determination shall be documented by security personnel together with the basis of such determination and shall be reviewed by the facility superintendent, in consultation with a mental health clinician, not less than every seven days for as long as the incarcerated individual remains in a residential rehabilitation unit. The facility shall attempt to resolve such exceptional circumstances so that the heightened level of care may be provided. If such exceptional circumstances remain unresolved for thirty days, the matter shall be referred to the joint central office review committee for review.

(7) All incarcerated individuals in a residential rehabilitation unit in a level one or level two facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within seven days of their initial mental health assessment unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All incarcerated individuals in a residential rehabilitation unit in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within thirty days of their initial mental health assessment, and additional interviews at least every ninety days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

(b) [Upon admission to a residential rehabilitation unit, a program management team shall:]All residential rehabilitation units shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(1) [develop an individual rehabilitation plan in consultation with the incarcerated individual based upon his or her programming needs, identifying specific goals, program(s) to be offered, including discharge from the unit or a recommendation to transition to a step-down unit; and]Incarcerated individuals placed in a residential rehabilitation unit shall be offered at least six hours of daily out-of-cell congregate programming, services, treatment, and/or meals, with an additional minimum of one hour for recreation. Recreation in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility. Persons in residential rehabilitation units shall be offered programming and out-of-cell time pursuant to directive(s).

(2) [conduct periodic reviews of the incarcerated individuals.]No limitation on services, treatment, or basic needs such as clothing, food, and bedding shall be imposed as a form of punishment. If provision of any such services, treatment, or basic needs to an individual would create a significant and unreasonable risk to the safety and security of incarcerated persons, staff, or the facility, such services, treatment, or basic needs may be withheld until it reasonably appears that the risk has ended. The department shall not

impose restricted diets or any other change in diet as a form of punishment. Persons in a residential rehabilitation unit shall have access to all of their personal property unless an individual determination is made that having a specific item would pose a significant and unreasonable risk to the safety of incarcerated persons or staff or the security of the unit.

(3) Upon admission to a residential rehabilitation unit, program and mental health staff shall administer assessments and develop an individual rehabilitation plan in consultation with the resident, based upon their medical, mental health, and programming needs. Such plan shall identify specific goals and programs, treatment, and services to be offered, with projected time frames for completion and discharge from the residential rehabilitation unit.

(4) An incarcerated person in a residential rehabilitation unit shall have access to programs and work assignments comparable to core programs and types of work assignments in general population. Such incarcerated persons shall also have access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in a residential rehabilitation unit, and helping prepare for discharge from the unit and to the community.

(5) If the department establishes that a person committed an act defined in Correction Law Section 137(6)(k)(ii) while in a residential rehabilitation unit and poses a significant and unreasonable risk to the safety and security of other incarcerated persons or staff, the department may restrict such person's participation in programming and out-of-cell activities as necessary for the safety of other incarcerated persons and staff.

(i) If such restrictions are imposed, the department must provide at least four hours out-of-cell time daily, including at least two hours of therapeutic programming and two hours of recreation, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen days unless the person commits a new act defined herein justifying restrictions on program access, or if the commissioner and, when appropriate, the commissioner of mental health personally reasonably determine that the person poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff.

(ii) Any extension of program restrictions beyond fifteen days must be meaningfully reviewed and approved at least every fifteen days by the commissioner and, when appropriate, by the commissioner of mental health. Each review must consider the impact of therapeutic programming provided during the fifteen-day period on the person's risk of imminent harm and the commissioner must articulate in writing, with a copy provided to the incarcerated person, the specific reason why the person currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff. In no case may restrictions imposed by the commissioner extend beyond ninety days unless the person commits a new act defined herein justifying restrictions on program access.

(6) Restraints shall not be used when incarcerated persons are participating in out-of-cell

activities within a residential rehabilitation unit unless an individual assessment is made that restraints are required because of a significant and unreasonable risk to the safety and security of other incarcerated persons or staff.

(c) [An incarcerated individual serving a disciplinary sanction in a residential rehabilitation unit will only be discharged to a special housing unit under the following specific, limited circumstances:]Any sanction imposed on an incarcerated person requiring segregated confinement shall run while the person is in a residential rehabilitation unit and the person shall be discharged from the unit before or at the time such sanction expires. If a person successfully completes their rehabilitation plan before the sanction expires, the person shall have a right to be discharged from the unit upon such completion.

(1) [When it is determined by the program management team that an incarcerated individual has been chronically failing to comply with the program objectives, the program management team will first attempt to obtain program compliance. De-escalation, intervention and informational reports and the withdrawal of incentives shall be the preferred methods of responding to less serious negative behavior. All efforts to obtain compliance will be fully documented by the program management team. Absent compliance, a recommendation may be made for alternate program placement or discharge to a special housing unit. The recommendation by the program management team shall be forwarded to the superintendent for determination. The superintendent's determination will be forwarded to central office for review, and if necessary, transfer action. Misbehavior reports can only be issued in circumstances where the incarcerated individual is accused of serious offenses, the alleged behavior demonstrates a threat to safety and/or the incarcerated individual has engaged in repeated acts of disruptive misbehavior despite prior alternative interventions.]If an incarcerated person has not been discharged from a residential rehabilitation unit within one year of initial admission to such a unit or is within sixty days of a fixed or tentatively approved date for release from a correctional facility, they shall have a right to be discharged from the unit unless they committed an act listed in Correction Law Section 137(k)(ii) within the prior one hundred eighty days and they pose a significant and unreasonable risk to the safety or security of incarcerated persons or staff. In any such case the decision not to discharge such person shall be immediately and automatically subjected to an independent review by the commissioner and the commissioner of mental health or their designees. A person may remain in a residential rehabilitation unit beyond the time limits provided in this section if both commissioners, or both of their designees, approve this decision. In extraordinary circumstances, a person who has not committed an act listed in Correction Law Section 137(6)(k)(ii) within the prior one hundred eighty days, may remain in a residential rehabilitation unit beyond the time limits provided in this section if both the commissioner and the commissioner of mental health personally determine that such individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff.

(2) [When it is determined that an incarcerated individual poses an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility, the deputy superintendent for security will consult with the program management team and make a recommendation. The recommendation by the

deputy superintendent for security will be forwarded to the superintendent for determination. The superintendent's determination will in turn be forwarded to central office for review, and if necessary, transfer action.]There shall be a meaningful periodic review of the status of each incarcerated person in a residential rehabilitation unit at least every sixty days to assess the person's progress and determine if the person should be discharged from the unit. Following such periodic review, if the person is not discharged from the unit, program and mental health staff shall specify in writing the reasons for the determination and the program, treatment, service, and/or corrective action required before discharge. The incarcerated person shall be given access to the programs, treatment, and services specified, and shall have a right to be discharged from the residential rehabilitation unit upon the successful fulfillment of such requirements.

(3) When an incarcerated person is discharged from a residential rehabilitation unit, any remaining time to serve on any underlying disciplinary sanction shall be dismissed. If an incarcerated person substantially completes their rehabilitation plan, they shall have any associated loss of good time restored upon discharge from the unit.

(d) [Incarcerated individuals placed in a residential rehabilitation unit shall be released to general confinement no later than the expiration of the sanction imposed or upon successful completion of a residential rehabilitation unit program, whichever is earlier. The remainder of the incarcerated individual's sanction, if any, will be suspended upon the incarcerated individual's release from the residential rehabilitation unit program. If the incarcerated individual does not engage in any sanctionable conduct during the duration of the suspended sanction, that disciplinary sanction will expire on the earlier of the sanction end-date or six months from the date of release to general confinement. Service of suspended penalties may be imposed as a sanction, based on an individualized assessment, only for serious misbehavior or for committing the same or similar violation as that leading to the suspended sanction.]All residential rehabilitation unit staff and their supervisors shall undergo specialized training prior to assignment to such unit, and regular specialized training thereafter, on substantive content developed in consultation with relevant experts, on topics including, but not limited to, the purpose and goals of the non-punitive therapeutic environment, trauma-informed care, restorative justice, and dispute resolution methods.

(e) [An incarcerated individual assigned to keeplock status in a residential rehabilitation unit pursuant to this section shall:]The department shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in segregated confinement and the total number of people who are in residential rehabilitation units on the first day of each month. The reports shall provide a breakdown of the number of people in segregated confinement and in residential rehabilitation units by:

- (1) [be subject to the property limitations set forth in section 302.2(a)-(g) of this Title]age;
- (2) [be subject to the visiting conditions set forth in sections 302.2(i)(1) and 255.03 of this Title, unless restricted by disciplinary or administrative action]race;
- (3) [be subject to the package limitations set forth in sections 302.2(i)(3) and 255.03 of this Title]gender;

- (4) [have their commissary privileges suspended pending a determination in a disciplinary proceeding]mental health treatment level;
- (5) [be subject to the limitation on telephone calls contained in section 302.2(i)(2) of this Title]special health accommodations or needs;
- (6) [be afforded correspondence privileges as set forth in section 302.2(h) of this Title; and]need for and participation in substance use disorder programs;
- (7) [be credited at the rate of three days for every two days served.]pregnancy status;
- (8) continuous length of stay in residential treatment units as well as length of stay in the past sixty days;
- (9) number of days in segregated confinement;
- (10) a list of all incidents resulting in sanctions of segregated confinement by facility and date of occurrence;
- (11) Number of incarcerated persons in segregated confinement by facility; and
- (12) the number of incarcerated persons in residential rehabilitation units by facility.

Chapter VI, Part 330

Amend Part 330 title as follows: Protective Custody Status [Inmates]Incarcerated Individuals

Section 330.1 amended as follows:

Section 330.1. Purpose

This Part sets forth the minimum conditions of confinement for [inmates]incarcerated individuals in protective custody within the department. [Inmates]incarcerated individuals in this status shall be housed in an area which will best maximize the safety and security of both the [inmates]incarcerated individuals and the facility.

Section 330.2 amended as follows:

Section 330.2. Definitions

(a) *Voluntary protective custody [inmate]incarcerated individual*. An [inmate]incarcerated individual who is a potential victim or a witness likely to be intimidated, or who lacks the ability to live in the general facility community and who may for good cause be restricted from communication with the general [inmate]incarcerated population, and who voluntarily accepts admission into protective custody status.

(b) *Involuntary protective custody [inmate]incarcerated individual*. An [inmate]incarcerated individual who may be a potential victim or a witness likely to be intimidated, or who lacks

the ability to live in the general facility community and who may for good cause be restricted from communication with the general [inmate]incarcerated population, and who does not voluntarily accept admission into protective custody status.

Section 330.3 is amended as follows:

Section 330.3. Admission and transfer policy

Consistent with the department's policy of providing appropriate programming, [inmates]incarcerated individuals placed in protective custody status will be evaluated and recommended for transfer to facilities where they may be appropriately programmed in general population. This provision is not applicable, however, to [inmates]incarcerated individuals at reception centers or [Upstate Correctional Facility, or to inmates assigned to the Merle Cooper or APPU programs at Clinton Correctional Facility]assigned to a protective custody unit at Mid-State, Attica, Clinton, Elmira, Great Meadow, Green Haven, Hudson, Sing Sing, or Woodbourne Correctional Facilities; or assigned to the assessment and program preparation unit (APPU) at Clinton Correctional Facility.

(a) *Voluntary protective custody [inmate]incarcerated individual.* An [inmate]incarcerated individual in this status may request reassignment to general population. Such request shall be evaluated and within 14 days the [inmate]incarcerated individual shall either be assigned to general population or be subject to a hearing, conducted in accordance with the provisions of Part 254 of this Title, to determine the need for assignment to involuntary protective custody status.

(b) *Involuntary protective custody [inmate]incarcerated individual.*

(1) An [inmate]incarcerated individual in this status shall have a hearing, conducted within 14 days in accordance with [the provisions of Part 254 of this Title]directive(s), to determine the need for protective custody admission.

(2) An [inmate]incarcerated individual in this status shall have such status reviewed every 30 days by a three-[]member committee consisting of a representative of the facility executive staff, a security supervisor, and a member of the guidance and counseling staff. The results of such review shall be forwarded, in writing, to the superintendent for final determination.

Section 330.4 is amended as follows including adding new subdivision (e) and re-lettering the remaining subdivisions (f) through (o):

Section 330.4. Conditions of confinement

(a) *Out-of-cell time.* [Inmates will be afforded the opportunity to be out of their cells for a minimum of three hours per day between the hours of 7 a.m. and 11 p.m. A minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional two hours of out-of-cell time may be used for, but not limited to, the following activities (see section 330.5 of this Part for exceptions):]No incarcerated individual may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to requirements governing residential rehabilitation units. Incarcerated individuals will be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation,

activities, and/or meals, with an additional hour for recreation, a minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional six hours of out-of-cell time may be used for activities listed in directive(s).

- [(1) gallery or yard recreation;
- (2) meals;
- (3) telephone calls;
- (4) showers;
- (5) visiting;
- (6) gallery programs; and/or
- (7) additional outdoor exercise.]

(b) *Exercise/recreation.*

(1) Weather permitting, one hour of exercise per day will be out-of-doors, excluding the time necessary to process and escort the [inmate]incarcerated individual to and from the outdoor exercise area.

(2) Gallery recreation will include opportunities for [inmates]incarcerated individuals to participate in passive board games, watch television, play cards, read or write outside of their cells.

(c) *Meals.* [(1) Inmates in protective custody status will be afforded the opportunity to participate in two meals per day outside of their cells. (See section 330.5 of this Part for exceptions.) (2) Inmates]incarcerated individuals will be provided meals of the same type as the meals available to [inmates]incarcerated individuals in general population, and in sufficient quantity to be nutritionally adequate.

(d) *Religious programs.* The facility chaplains will visit [inmates]incarcerated individuals in protective status once a week to provide religious counseling.

(e) Counseling services. A representative of the guidance and counseling unit shall visit the area where incarcerated individuals who are assigned to protective custody status are housed pursuant to directive(s).

[(e)f] Law library services. The facility law library will provide a list of legal books, journals, and papers in the facility law library that are available to [inmates]incarcerated individuals in protective custody status. This list will be made available to these [inmates]incarcerated individuals upon request.

(1) An [inmate]incarcerated individual may obtain legal materials from the law library by submitting a written request subject to the following conditions:

- (i) a maximum of two items may be ordered at one time;
- (ii) the law library will deliver the requested items, if available, within 24 hours of receiving the request; and
- (iii) [inmates]incarcerated individuals may retain said legal material for a period of not less than 16 hours nor more than 24 hours at a time.

(2) [Inmates]Incarcerated individuals may receive the legal services (*i.e.*, legal research, photocopying, typing) normally available to the general population (see directive 4483, Law libraries and [inmate]incarcerated individual legal assistance).

(3) Notwithstanding the requirements of paragraph (2) of this subdivision, no [inmate]incarcerated advisers or [inmate]incarcerated law clerks will be permitted to visit [inmates]incarcerated individuals in protective custody status.

(4) All communications between [inmates]incarcerated individuals in protective custody status and the law library will be monitored by facility staff.

(5) All [inmate]incarcerated individual legal materials going to or coming from the law library will be subject to search.

(6) Whenever a law library service item is deemed to be improper or inappropriate, it shall be referred to the area supervisor for a determination as soon as possible. The staff member doing this shall notify the [inmate]incarcerated individual and record the action in the appropriate log.

(7) [Inmates]Incarcerated individuals may be deprived of law library services by issuance of deprivation order after consultation with counsel's office.

(8) Notary services will be available two times per week.

([f]g) *General library services.* There shall be available to [inmates]incarcerated individuals in protective custody status, general library materials in the quantity equal to at least two books and one magazine/periodical for each [inmate]incarcerated individual. This reading material will be rotated every 60 days.

(1) [Inmates]Incarcerated individuals may request and maintain these general library books, magazines or newspapers in their cells for a period of at least one week.

(2) [Inmates]Incarcerated individuals assigned to protective custody status may, in the discretion of the facility superintendent, be permitted access to other materials in the general facility library either through a referral system or by visiting the library at times when general population [inmates]incarcerated individuals do not have access to that area.

([g]h) *Education.* [Inmates]Incarcerated individuals in protective custody status will be offered the opportunity to participate in cell study program. Education counselors, teachers or other appropriate staff members may visit the protective custody [inmates]incarcerated individuals as needed to provide assistance to any [inmate]incarcerated individual participating in a cell study program.

([h]i) *Commissary/packages.* Except for restrictions imposed as a result of a disciplinary action, packages and commissary will be delivered to the [inmates]incarcerated individuals

in protective custody status. [Inmates]Incarcerated individuals will not go to the package room or commissary to pick up their own items.

(([i])j) *Telephone calls.* Except for restrictions imposed as a result of a disciplinary action, [inmates]incarcerated individuals in protective custody status will be permitted to participate in the telephone home program.

(([j])k) *Visitation/correspondence.* Except for restrictions imposed as a result of a disciplinary action or restrictions imposed pursuant to appropriate departmental directives, there shall be no limitations on the visitation and correspondence for [inmates]incarcerated individuals in protective custody status.

(([k])l) *Family reunion program.* [Inmates]Incarcerated individuals in protective custody status shall be eligible to apply for participation in the family reunion program pursuant to Part 220 of this Title.

(([l])m) *[Inmate]Incarcerated grievance program.*

(1) [Inmates]Incarcerated individuals in protective custody status shall have access to the [inmate]incarcerated grievance program in accordance with the requirements of Part 701 of this Title, [inmate]incarcerated grievance program. The superintendent shall establish procedures to ensure that the grievance mechanism is available to [inmates]incarcerated individuals in protective custody status without jeopardizing institutional safety and security.

(2) [Inmates]Incarcerated individuals in protective custody status are not required to personally appear before the grievance committee.

(([m])n) *Laundry services.* Laundry services for [inmates]incarcerated individuals in protective custody status shall be provided in the same manner and with the same frequency as provided to [inmates]incarcerated individuals in general population.

(([n])o) *Personal property.* [Inmates]Incarcerated individuals will be issued their personal property when assigned to in protective custody status, subject to safety and security considerations.

Section 330.5, subdivision (b) is repealed.

Section 330.6 is amended as follows:

Section 330.6. Local rules and regulations

Each facility housing [inmates]incarcerated individuals in protective custody status shall promulgate rules and regulations for care and custody and submit them to the deputy commissioner for facility operations for review and approval.

Chapter VIII, Part 724

Section 724.2 is amended as follows:

Section 724.2. Applicability

[(a)] This Part applies to all [inmate]incarcerated individuals except for those:

[(1)a] assigned to a special housing unit or in special housing status (see Chapter VI of this Title);

[(2)b] in reception or in-transit status; or

[(3)c] housed in a shock incarceration facility, drug treatment campus, alcohol and substance abuse treatment or work release facility except as may be specifically authorized and limited by the deputy commissioner for correctional facilities.

Subdivision (b) is repealed

Section 724.3, Subdivision (a) is amended as follows:

(a) General

* * *

(3) Articles received in a package must comply with departmental directives concerning packages and personal property limits. Articles received that are not for the [inmate]incarcerated individual's personal use, [or] which cause the [inmate] recipient to exceed the number of allowable packages, weight limits, or in-cell limits, or which otherwise violate departmental directives will not be allowed and will be disposed of in accordance with departmental directives. When an [inmate]incarcerated individual signs for a package, [he or she]the individual will attest that the articles are only for personal use and that receipt will not cause the [inmate]incarcerated individual to exceed personal property limits. If an [inmate]incarcerated individual refuses to sign for a package, it will be disposed of in accordance with the departmental directive on [inmate] personal property limits.

Paragraphs (4), (5), (6), and (8) are repealed

Paragraph (7) is renumbered to Paragraph (4) and is amended as follows:

[(7)4] The department is not responsible for articles damaged in shipping or received in spoiled condition. Spoiled food articles or items which are contaminated or in broken or leaking containers are considered a health risk and will be destroyed by the facility. Such destruction will be recorded on the [inmate]incarcerated individual's package records.

Section 724.3, Subdivision (b), is amended as follows:

(b) Searches for packages.

(1) Packages shall be searched thoroughly to ensure that all articles conform to regulations and departmental directives. Articles will be removed from the original shipping container (box or bag in which the package was shipped or brought into the facility) and inspected visually and/or by use of the x-ray machine. In searching and examining packages, care shall be taken not to damage or destroy the contents. The shipping container (bag or box) will not be given to the [inmate]incarcerated individual.

* * *

(3) Promotional materials (e.g., prizes, informational discs, etc.) or other non-product items or substances sealed within original packaging or attached to an allowed article will be removed prior to issue. These materials will be disposed of in accordance with the departmental directive on [inmate] personal property limits.

(4) Inspection and processing of religious articles shall be conducted in such a manner as to respect their religious significance. If an article's religious significance is in doubt, the facility chaplain shall be consulted. If an article is suspected of being contraband, it may be tested as appropriate. Articles which are considered or suspected of being contraband or which are under evaluation for authenticity or religious significance shall be secured by the deputy superintendent for security pending disposition and notification of the affected [inmate] incarcerated individual. If the [inmate] incarcerated individual files a grievance within 21 days of receipt of a notice that an article has been denied, such religious article shall be retained by the facility pending the final resolution and closing of the grievance.

(5) Contraband. Contraband articles shall be confiscated and the superintendent or designee notified. Contraband will include any article:

(i) which possession of is prohibited under any law applicable to the general public;

(ii) which is readily capable of being used to cause death or serious physical injury, including but not limited to handguns, shoulder guns, cartridges, knives, explosives, or dangerous drugs; [or]

(iii) which has been introduced into a correctional facility with the intent to transfer it to an [inmate] incarcerated individual without the permission of the superintendent or his or her designee[.];

(iv) which could be utilized to assist or affect an escape or undermine the safety and security and/or practices consistent with the department's mission; or

(v) which is an approved item but has been altered from its original intent and/or purpose.

(6) Articles not permitted (other than contraband) will be disposed of in accordance with departmental directive.

[(i) When any article which is not permitted is brought by a visitor, it will be returned to the visitor, if possible, upon the visitor's departure from the facility.

(ii) In the case of other articles not permitted, except for any article brought by a visitor and returned to the visitor upon departure from the facility, general confinement inmates (non-restricted inmates) will be given the opportunity to view the disallowed article and then choose a disposal option by signing an authorization for disposal form. If the choice is to ship the article, the inmate will fill out a disbursement

form for the cost of the shipping. The package room will send out the package and forward the disbursement form to the business office for processing. If funds are available, the facility business office will deduct the amount of the disbursement from the inmate's account. If funds are not available, the business office will establish an encumbrance for the amount of the disbursement.

(iii) Articles not disposed of or articles brought by a visitor but not returned to a visitor within 14 days will be destroyed or donated to a charity by the facility. It is clearly not the department's intent to give each inmate 14 days (except as provided in this subdivision) to choose a disposal option, requiring storage by the facility. It is the intent that an inmate be given a clear notice that an article is not permitted and a clear opportunity to choose how such an article will be disposed of.]

(7) Articles [will]shall not be altered or modified by the manufacturer or vendor, except for removal of external radio antennas. [Articles will not be altered or modified once they arrive at the facility in order to comply with the specifications set forth in this Part.]

Paragraph (8) is repealed.

Section 724.3, Subdivisions (c), (d), (e), and (f) are repealed.

Section 724.3, Subdivisions (g), (h), (i), and (j) are renumbered to Subdivisions (c), (d), (e), and (f) accordingly.

Section 724.3, Paragraphs (2), (3), and (4) of newly renumbered subdivision (c) are repealed and newly renumbered subdivision (c) is amended as follows:

[(g)]c) Package Records.

[(1)]All articles received shall be recorded [on package forms with the sender's name and address and the name and department identification number (DIN) of the inmate recipient]in accordance with departmental directive.

Section 724.3, Paragraph (2) of newly renumbered subdivision (d) is repealed and newly renumbered subdivision (d) is amended as follows:

[(h)]d) Loss of package privileges.

[(1)]Packages received for an [inmate]incarcerated individual serving a disciplinary disposition which includes "loss of package privileges" will be handled [as follows:]in accordance with departmental directive.

[(i)]packages brought by visitors - shall be returned to the visitor;

[(ii)]packages received by mail:

(a) from a publisher - shall be given to the inmate subject to the provisions of Part 712 of this Title, "Media Review;"

(b) from other commercial sources:

(1) if ordered by the inmate and approved by the business office prior to the disciplinary disposition, the package shall be issued to the inmate. Otherwise, the package shall be returned to sender; and

(2) if ordered by family or a correspondent, the package shall be handled as set forth in clause (c) of this subparagraph;

(c) from all other sources:

(1) if received during first five days of "loss of packages" - shall be delivered to the inmate unless the inmate has been confined in a special housing unit; and

(2) if received after first five days of "loss of packages," - shall be returned to sender unopened.]

Section 724.3, Paragraph (2) of newly renumbered subdivision (e) is repealed and newly renumbered subdivision (e) is amended to read as follows:

([i]e) Packages received for [inmate]incarcerated individuals in SHU.

[(1)]Pending disciplinary action, or during first five days of a "loss of packages" disposition: Package items, except for books, periodicals, legal materials and perishables, shall be placed in the [inmate]incarcerated individual's property and added to the [inmate]incarcerated individual's property transferred inventory form; books, periodicals and legal materials may be given to the [inmate]incarcerated individual subject to the limitations in Chapter VI of this Title, but perishables shall be disposed of in accordance with the departmental directive on [inmate] personal property limits.

Section 724.3, Paragraphs (1) and (2) of newly renumbered subdivision (f) are repealed and newly renumbered subdivision (f) is amended as follows:

([j]f) Packages received for [inmate]incarcerated individuals transferred or temporarily absent from the facility shall be handled in accordance with departmental directives.

Section 724.4, Subdivision (a), Paragraphs (1), (2), (3), (4), and (5) are repealed and Subdivision (a) is amended to read as follows:

(a) Certain articles cannot be approved department-wide because of programmatic and physical plant characteristics of individual facilities. In order that those locations which can accommodate special articles are not governed by those which cannot, each facility [may]shall consider the issuance of "local permits" in accordance with [the following:]departmental directives.

Section 724.4, Subdivision (b), Paragraphs (1), (2), (3), and (4) are repealed and Subdivision (b) is amended to read as follows:

(b) Each superintendent is required to maintain a current list of all approved local permits[to include:].

Section 724.5 is amended as follows:

Section 724.5. Listing of approved items and disposal procedures

[(a)]The department shall [promulgate]maintain a departmental directive concerning the receipt of packages, including a detailed listing of items approved for receipt by [inmate]incarcerated individuals through facility package rooms, and policy for the disposal of disallowed packages and items, which. This listing]shall be [appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made] available to [inmate]incarcerated individuals in all facility libraries, posted in all facility package rooms and visiting rooms, and posted on the department's website.[at www.docs.state.ny.us/directives/4911.pdf]

Subdivisions (b) and (c) are repealed